

FAQs ABOUT TENNESSEE CODE ANNOTATED § 67-4-2601 *et seq.*
(Also known as 2003 Public Acts Chapter 294)

- **Will tobacco product manufacturers be added to the directory if they missed the deadline for submitting an initial certification?**

Initial certifications were due on July 21, 2003, but Tenn. Code Ann. § 67-4-2602(b)(3) provides that the Commissioner shall update the directory as necessary. Accordingly, tobacco product manufacturers that come into compliance will be added to the directory, and tobacco product manufacturers who fall out of compliance will be removed from the directory, as necessary.

- **Are licensed agents allowed an extension or grace period of any sort relative to their obligation to provide their first report required by Tenn. Code Ann. § 67-4-2604(a)?**

No, initial reports were due on July 8, 2003, and the law makes no provision for an extension or grace period. However, the Department will administer Tenn. Code Ann. § 67-4-2604(a) to mandate that each licensed agent's initial report under that law will cover the period May 1, 2003, through May 31, 2003. This, in essence, gives a licensed agent 36 days (i.e., from June 1st to July 6th) to provide its initial report of monthly cigarette sales activities. (Subsequent reports are due no later than the 20th day of the month following the month covered by the report, which due date is in conformity with the law.)

- **What do I do with cigarettes that I have in stock that are not listed on the directory when it is posted or at the time of a subsequent directory update?**

Those cigarettes are subject to seizure by action of the Department. However, you may voluntarily surrender them to the Department. If you find that you have such cigarettes in stock, you should contact the Department at (615) 741-2679 or 1-800-FRAUDTX (1-800-372-8389) to make arrangements for surrender or delivery of the cigarettes.

- **What if I buy cigarettes of a brand that is on the directory when I buy them, but the next day, that brand is removed from the directory? Can I still sell them?**

No, you cannot sell them. You should not sell or possess for resale in Tennessee cigarettes of a tobacco product manufacturer or brand family that are not on the directory, regardless of whether they were on the directory at the time of purchase.

- **Is there a period of time, after the law goes into effect and the Department has published its initial directory, during which I can have, sell or try to sell cigarettes of a manufacturer or brand family that are not listed on the directory or of a manufacturer and/or brand family whose name has been removed from the directory?**

No, Tenn. Code Ann. § 67-4-2601 *et seq.* does not provide for such a "grace period."

- **Am I allowed to have cigarettes in stock that will be sold in another state, but are not on Tennessee's directory?**

Cigarettes manufactured by a tobacco product manufacturer not listed on Tennessee's directory and/or cigarettes in a brand family not listed on Tennessee's directory cannot be sold, offered for sale or possessed for sale in Tennessee. If you possess cigarettes that are not on Tennessee's directory but are intended for sale in another state, then there should be tangible indicia of the intent to sell in another state (e.g., affixing tax stamps of another state, if required, and segregating the cigarettes by state from those intended for sale in Tennessee). Whether the cigarettes are subject to seizure by the Department of Revenue as contraband will depend on where they are intended to be sold.

- **What is a "brand family" and why is it important?**

"Brand family" is a term specifically defined in Tenn. Code Ann. § 67-4-2601(1). Generally, it means all styles of cigarettes sold under the same trademark and differentiated from one another by means of additional modifiers or descriptors, including, but not limited to "menthol," "lights," "kings," and "100s." For example:

[brand family],
[brand family] menthol,
[brand family] lights,
[brand family] kings, and
[brand family] 100s

A wholesaler's monthly licensed distributor report should, among other things, reflect the total number of cigarettes in the brand family sold in Tennessee to which Tennessee tobacco tax stamps have been affixed during the month. If there is confusion about what cigarettes are in a particular brand family, wholesalers may elect to list different brands (which may be included in the same brand family as defined in the statute) separately along with the corresponding number of cigarettes of each such brand sold.

- **What is the penalty for selling cigarettes in Tennessee that are not listed on**

Tennessee's directory?

There are several potential penalties for selling cigarettes made by a tobacco product manufacturer or of a brand family not included on the directory. These potential penalties include:

1. Disgorgement of profits
2. Seizure and forfeiture of the cigarettes
3. Criminal charges for committing a class B misdemeanor
4. Revocation or suspension of a tobacco tax license
5. A civil penalty

- **Will the Department issue a refund for tobacco tax stamps affixed to cigarette brands not listed on Tennessee's directory?**

The Department will issue refunds in this circumstance, less applicable discounts, pursuant to applicable law. Generally, a claimant would be entitled to a refund if it surrendered the cigarettes, with tax stamps affixed, to the Department and it otherwise complied with the refund process established by Tenn. Code Ann. § 67-4-1008 and TENN. COMP. R. & REGS. 1320-4-3-.08.